



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 21, 1993

Mr. William J. Delmore, III
General Counsel
Harris County District Attorney's Office
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR93-030

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17107.

The Harris County District Attorney received an open records request for a video tape recording of the execution of a search warrant upon an individual indicted for the offense of sale of a child. Because the videotape reveals the interior of the criminal defendant's home, which also served as her place of business, you contend the requested information comes under the protection of section 3(a)(1) of the Open Records Act.


Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. This is not a balancing test; for information to be protected under common-law privacy, the information must meet both prongs of this test. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

You contend that the videotape comes under the protection of common-law privacy because the disclosure of the contents of the videotape "would tend to show highly intimate and embarrassing facts regarding [the criminal defendant]" and "the potential for embarrassment outweighs the public's significant and substantial concerns with regard to this matter." The videotape at issue reveals nothing about the criminal defendant other than portions of the exterior and interior of her home. After reviewing the requested material, this office has determined that the videotape contains no "highly intimate or embarrassing" information the release of which would be highly objectionable to a reasonable person. We further note that because the criminal defendant has alleged

wrong-doing on behalf of the law-enforcement officials who served and executed the warrant, there is an obvious public interest in the content of the videotape. Consequently, the videotape is not protected by common-law privacy and accordingly must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-030.

Yours very truly,



Madeleine B. Johnson
Chair, Opinion Committee

MBJ/lmm

Ref.: ID# 17107
ID# 17870

Enclosures: Videotape

cc: Ms. Muriel Pearson
ABC News
157 Columbus Avenue
New York, NY 10023
(w/o enclosures)